

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN INQUIRY INTO UNIVERSAL)	ADMINISTRATIVE
SERVICE AND FUNDING ISSUES)	CASE NO. 360

O R D E R

The Commission, on its own motion, HEREBY ORDERS the following procedures:

1. The prefiled testimony due on July 11, 1997 shall be divided into the categories listed below. A witness shall be identified for each section.

- (a) Services Eligible for Support.
- (b) Affordability.
- (c) Carriers Eligible for Universal Service Support. This section should include the definition of service areas and carrier of last resort obligations.
- (d) Cost of Universal Service Support. Emphasize appropriate cost models for determining rural and high cost area support in this section. Provide Kentucky-specific costs, if available.
- (e) Source of Monies for Universal Service Fund. Include comments about the non-traffic sensitive rate element in this category.
- (f) Support for low income consumers.
- (g) Support for Schools, Libraries and Health Care Providers. Discuss only those issues not covered by the Commission's Order entered this day approving the Federal Communications Commission's discount matrix.
- (h) Administration of the Universal Service Fund.
- (i) Any additional items or issues not addressed in (a) through (h).

Parties need address only those items in which they have an interest. Parties addressing multiple issues should do so in separate sections.

2. At the public hearing to begin July 28, 1997, the parties will be allowed either an opening statement or a summary of direct testimony, not both. Additionally, the Commission will **strictly** limit the opening statement or summary to five minutes. Moreover, cumulative or repetitive evidence will not be heard. The parties are also put on notice that the Commission contemplates conducting evening sessions.

Done at Frankfort, Kentucky, this 17th day of June, 1997.

PUBLIC SERVICE COMMISSION


For the Commission

ATTEST:


Executive Director

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O R D E R

On May 8, 1997, the Federal Communications Commission ("FCC") issued its Report and Order, FCC Order No. 97-157 ("Order"), implementing key portions of Section 254 of the Telecommunications Act of 1996 ("the Act"), which addresses universal service. The Order identified the services to be supported by federal universal service funding and the mechanisms for providing such funding. Among the items to be supported by federal universal service funding are discounts on telecommunications services and certain non-telecommunications services for schools and libraries.

The FCC Order provides for funding of both interstate and intrastate services for schools and libraries. Eligibility for the discounts is predicated upon adoption by the states of the federal discount levels for intrastate services. The FCC rules permit schools and libraries to begin using the discounted services on January 1, 1998. However, schools and libraries may apply for funding as early as July 1, 1997. So that Kentucky schools and libraries will not be at a disadvantage, we address the adoption of intrastate discounts for schools and libraries in this Order.

The Act requires states to establish intrastate discounts on designated services provided to eligible schools and libraries:

All telecommunications carriers serving a geographic area shall, upon a bona fide request for any of its services that are within the definition of universal service under subsection (c) (3), provide such services to elementary schools, secondary schools, and libraries for educational purposes at rates less than the amounts charged for similar services to other parties. The discount shall be an amount that the Federal Communications Commission, with respect to interstate services, and the States, with respect to intrastate services, determine is appropriate and necessary to ensure affordable access to and use of such services by such entities.

47 U.S.A. § 254(h)(1)(B). Section 254(h)(1)(B) of the Act permits the states to determine the level of discount available to eligible schools and libraries with respect to intrastate services. However, the FCC states in paragraph 550 of its order that the Act neither prohibits federal funding of such intrastate discounts, nor prohibits conditioning that funding on state adoption of the federal discount levels. Accordingly, the FCC has determined that federal universal service support will be provided for intrastate discounts.

KRS 278.035 specifically prohibits preferential rates for entities supported by state funds. However, no state funding for the FCC-mandated intrastate discounts is required so long as we adopt the FCC discount levels. Kentucky law does not prohibit the federal funding contemplated here. Public education must be funded uniformly throughout the Commonwealth. Rose v. Council for Better Education, Inc., Ky., 790 S.W.2d 186 at 211. Varied discount rates initially appear to violate the uniform funding principle. However, the participating entities will be compensated for the discounts provided to schools and libraries completely through the federal universal fund rather than state funding. Therefore, no Kentucky law conflicts with the federal Act or with the FCC's Order regarding discounts for schools and libraries.

The FCC discounts range from 20 percent to 90 percent for all telecommunications services, Internet access, and internal connections, subject to a \$2.25 billion annual cap. The range of discounts is correlated to students' eligibility for the national school free and reduced lunch program, and urban or rural location based on metropolitan statistical areas (MSAs). The following discount matrix has been adopted by the FCC:

SCHOOLS AND LIBRARIES DISCOUNT MATRIX		DISCOUNT LEVEL	
HOW DISADVANTAGED?		Urban Discount (%)	Rural Discount (%)
% of Students Eligible For National School Lunch Program	(Estimated % of US Schools in Category)		
<1	3	20	25
1-19	31	40	50
20-34	19	50	60
35-49	15	60	70
50-74	16	80	80
75-100	16	90	90

The discounts are to be applied to a pre-discount price. According to the FCC, that price must be no higher than the lowest price the carrier charges to similarly situated non-residential customers for similar services. The pre-discount price is significant because it is the total price that carriers would receive for the services they sell to schools and libraries. In Kentucky, this price for toll services is that which was approved in Case No. 95-151¹ adopting rates proposed by local exchange carriers for the Kentucky Information Highway. While schools and libraries would pay only a discounted rate to

¹ Case No. 95-151, Proposed Special Contract of South Central Bell Telephone Company on Behalf of the Local Exchange Carrier Telephone Group for the Kentucky Information Highway RFP ET-41-95.

the carrier, the carrier would receive the amount of the discount from universal service support mechanisms. Therefore, the pre-discount price is the price most significant to providers of services to schools and libraries as well as to schools and libraries, because they must pay the nondiscounted portion of the price. The FCC believes that this will give schools and libraries a strong incentive to secure the lowest pre-discount price.

In its Order, the FCC clarified that the tariffed rate of a carrier would represent a carrier's lowest corresponding price in a geographic area in which that carrier has not negotiated rates that differ from the tariffed rate. The FCC does not require carriers to file new tariffs to reflect the discounts it has adopted for schools and libraries. However, KRS 278.160 requires the filing of schedules for "all rates and conditions for service." Accordingly, utilities shall file tariffs reflecting discounts adopted herein.

The Commission also notes that the level of discounts adopted by us will have no impact on universal service assessments paid by Kentucky carriers and ultimately by Kentucky telecommunications customers. Kentucky citizens will be major contributors to the federal universal service fund regardless of our action here. If we did not adopt discounts, Kentucky schools and libraries would not be able to avail themselves of the opportunity made available by the FCC Order. Instead, the funding would go to those states that did adopt the discounts for intrastate services.

Accordingly, the Commission hereby adopts the discount matrix contained in FCC Order No. 97-157, CC Docket 96-45, and represented in this Order for purposes of permitting schools and libraries to receive federal funding. By adopting this matrix, we do not waive the right to file an appeal on matters contained in the FCC Order with the

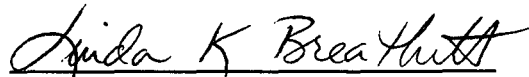
appropriate court of law or other entity. Nor do we purport to waive any such right of any party to this case.


Any person whose interests are substantially affected by this Order may file for rehearing pursuant to KRS 278.400.

The Commission, having been sufficiently advised, HEREBY ORDERS that the discount matrix in FCC Order No. 97-157, CC Docket 96-45, which is contained herein is hereby adopted.

Done at Frankfort, Kentucky, this 17th day of June, 1997.


PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director